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SPIRITS & WINE LLC f/k/a BEAM
GLOBAL SPIRITS & WINE, INC.

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Renata Bonar, On Behalf of Herself, All
Others Similarly Situated and the General
Public,

Plaintiff,

v.

BEAM GLOBAL SPIRITS & WINE, INC.,
and DOES 1-25, Inclusive,

Defendants.

Case No. 11-cv-02058 CAB (KSC)

The Hon. Karen S. Crawford

Courtroom: A

**DECLARATION OF SUSAN ST. DENIS
IN SUPPORT OF JOINT MOTION FOR
DETERMINATION OF DISCOVERY
DISPUTE (BEAM'S MOTION TO
COMPEL)**

DECLARATION OF SUSAN M. ST. DENIS IN SUPPORT
OF JOINT MOTION FOR DETERMINATION OF
DISCOVERY DISPUTE 11-CV-02058 CAB (KSC)

1 I, Susan St. Denis, declare as follows:

2 1. I am an attorney licensed to practice before all of the court of the State of
3 California. I am employed by Chadbourne & Parke, LLP, counsel of record for defendant Beam
4 Global Spirits & Wine, LLC ("Beam"). I have personal knowledge of the facts set forth below
5 and, if called as a witness, I could and would testify competently to them, based either on my
6 first-hand knowledge or on my personal review of the documents referred to herein. I submit this
7 declaration in support of Beam's Joint Motion for Determination of Discovery Dispute ("Motion
8 to Compel").

9 2. On August 8, 2012, Beam served its RFPs, consisting of 21 requests for
10 documents and things relating to Ms. Bonar's claims and contentions and Beam's defenses
11 regarding "Skinnygirl Margarita," preservatives, sodium benzoate, natural and all natural food
12 items, claimed damages, Ms. Bonar's purchase and use of "Skinnygirl Margarita" and other
13 natural and non-natural food and beverage items, the terms of the alleged express warranty, class
14 claims, and Ms. Bonar's adequacy to serve as the class representative, among other things.
15 Attached hereto as Exhibit A is a true and correct copy of Beam's RFP.

16 3. On or about September 7, 2012, Plaintiff served objections and responses to
17 Beam's RFPs. Attached hereto as Exhibit B is a true and correct copy of Plaintiff's responses.
18 Plaintiff responded that she has no documents responsive to five of the Requests, agreed to
19 produce documents responsive to two of the Requests, and as to the remaining 14 Requests,
20 repeated virtually identical boilerplate objections and provided no substantive responses or
21 documents. On September 27, 2012, Plaintiff produced a total of eight pages of documents in
22 response to request numbers 16 and 17. These are the only documents produced by Plaintiff to
23 date.

24 4. On September 19, 2012, I requested that Plaintiff's counsel "meet and confer"
25 with me to discuss Plaintiff's responses and boilerplate objections to Beam's RFP. On September
26 27, 2012, we held the "meet and confer" at the law offices of McKenna, Long & Aldridge, LLP
27 in San Diego. I attended telephonically from Los Angeles, Stefanie Warren, local counsel for
28

1 Beam, attended in person, and Ms. Rosa Shelton and Mr. Alex Tomasevic attended in person on
2 behalf of Plaintiff.

3 5. At the beginning of the meeting, Mr. Tomasevic stated that he did not believe that
4 Ms. Bonar has any documents responsive to Beam's request numbers 3, 4, 6, 7, 8, 11, and 12.
5 However, he stated that he had not confirmed the existence or non-existence of these responsive
6 documents with his client, and that Ms. Bonar was "on vacation" and "not reachable" by
7 telephone or e-mail.

8 6. Due to the time constraints imposed on motions to compel by the current
9 Scheduling Order (requiring that joint discovery motions relating to class certification be brought
10 by October 10, 2012), Ms. Warren and I urged Ms. Bonar's counsel to make every effort to reach
11 Ms. Bonar immediately and provide Beam with unequivocal, amended or supplemental
12 responses in order to avoid the unnecessary burden and expense of bringing this Motion to
13 Compel. Ms. Bonar's counsel agreed to do so with regard to the above listed requests and also
14 with regard to Ms. Bonar's responses to request numbers 9, 10, 14, 15, 18, 19, and 21.

15 7. Generally, with regard to Beam's Request numbers 3, 4, 6, 7, 8, 10, 11, 12, 14, 15,
16 and 19, Plaintiff's counsel did not argue that the Request called for confidential information, was
17 vague or ambiguous, or seek clarification regarding the meaning.

18 8. With regard to Request number 9, concerning Plaintiff's purchase of other
19 "natural" or "all natural" products, the discussion (also relevant to Request number 6) focused
20 primarily on Plaintiff's claim of burden, with Plaintiff's counsel skeptical that Ms. Bonar has
21 store receipts evidencing such purchases, but might have bank statements, cancelled checks,
22 and/or credit card receipts. Although he stated a concern that it could be difficult or costly for
23 Plaintiff to obtain those documents for production, he offered no evidence or facts to support his
24 supposition that production would, in fact, be difficult or costly. Counsel also did not explain
25 whether Ms. Bonar had failed to maintain copies of responsive documents, e.g., for purchases
26 made after the RFPs were served, or had instead made no such purchases.

27 9. With regard to Request number 18, the discussion focused mainly on whether
28 evidence regarding Plaintiff's weight loss and/or weight maintenance efforts were relevant, but

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DECLARATION OF SUSAN M. ST. DENIS IN SUPPORT
OF JOINT MOTION FOR DETERMINATION OF
DISCOVERY DISPUTE 11-CV-02058 CAB (KSC)

1 also addressed Plaintiff's overbroad and burden objections. Plaintiff's counsel stated the Plaintiff
2 is/was in Weight Watchers, but argued that because Plaintiff did not buy Skinnygirl Margarita in
3 2005, seeking information from 2005 was over broad. But he offered no facts or evidence that
4 locating and producing the requested documents would impose an undue burden on Plaintiff, or
5 that she producing the requested documents from 2005 would be substantially more burdensome
6 than producing the documents from 2006 or 2007.

7 10. With regard to Request number 21, the discussion focused primarily on Plaintiff's
8 claim of privacy. Specifically, Plaintiff's counsel's stated general concerns of "identity theft" and
9 that the driver's license not be "floating around." Ms. Warren and I reminded Plaintiff's counsel
10 that the protective order in this case, which governs the use and dissemination of materials
11 designated as confidential, could address any such concerns. Plaintiff's counsel did not provide
12 any reason that the Protective Order would be insufficient to address his concerns.

13 11. On October 2, 2012, I sent to counsel for Plaintiff, a copy of Beam's portion of the
14 draft Joint Motion for Determination of Discovery Dispute by email. I asked that, if they would
15 like to contribute to the Joint Motion, they add plaintiff's positions and bases therefore and return
16 the document to me by close of business October 9, 2012. Attached as Exhibit C is a true and
17 correct copy of my October 2, 2012 email to Plaintiff's counsel.

18 12. At approximately 5:10 p.m. on October 8, 2012, I received an email from Ms.
19 Shelton attaching supplemental responses from Plaintiff to certain of her responses, along with
20 three pages of documents (a redacted driver's license and an August 26, 2011 email cancelling
21 Ms. Bonar's Weight Watchers subscription "per her request.") Plaintiff did not provide any
22 supplement response to request numbers 9 and 10. Attached hereto as Exhibit D is a true and
23 correct copy of the Supplemental Responses and the three pages of documents.

24 13. The supplemental responses repeat and incorporate the objections that were
25 previously discussed at the "meet and confer," which in my view, render the brief declarative
26 statement regarding the extent or non-existence of responsive documents both unclear and
27 equivocal. For example, at the meet and confer, we discussed Ms. Bonar's credit card receipts
28 and cancelled checks and/or bank statements that relate to or are evidence of certain purchases

1 and how to obtain them. In her supplemental response to Request number 6 (which seeks
2 receipts and other evidence relating to her purchases of alcoholic beverages), Plaintiff repeated
3 all of her objections before stating that she does not have any responsive documents. Given the
4 prior discussion and her repetition of all objections, it is not clear whether Ms. Bonar actually
5 searched for all responsive documents (e.g. bank statements and credit card receipts) and has
6 none, or alternatively, is standing on her burden objection and thus somehow limited her search
7 (or did not search at all).

8 14. On October 9, 2012, I explained to Ms. Shelton the continuing problems with the
9 supplemental responses. A true and correct copy of my October 9, 2012, email is attached as
10 Exhibit E. Ms. Shelton responded that Plaintiff had not withheld documents based on the
11 objections, and that Plaintiff would produce responsive documents later that day and in the
12 future. A true and correct copy of Ms. Shelton's email is attached hereto as Exhibit F.

13 15. I responded that, among other things, if Plaintiff were to provide unequivocal
14 responses to each request that documents were *not* withheld based on any objection (other than
15 attorney client privilege or work product) and that, notwithstanding the objections, Plaintiff has
16 produced all documents in her possession, custody or control following a reasonable search, or
17 alternatively, that following a reasonable search, has determined that no responsive documents
18 exist, Beam will withdraw the Motion as to any pertinent requests. A true and correct copy of
19 my October 9, 2012 email is attached hereto as Exhibit G.

20 16. At approximately 5:09 p.m. on October 9, 2012, Ms. Shelton sent to me via email
21 Plaintiff's inserts to the Joint Motion. They have been incorporated into the Joint Motion.

22 17. I declare under penalty of perjury under the laws of the United States of America
23 that the foregoing is true and correct.

24 Executed on October 9, 2012 in Los Angeles, California.

25
26 s/Susan St. Denis
Susan St. Denis

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